

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Maleek Fulton,)	
)	
Plaintiff,)	
)	Civil Action No. 0:22-cv-1954-BHH
v.)	
)	
Sgt. Terry Mack; Officer Young,)	
)	<u>ORDER</u>
Defendants.)	
_____)	

This matter is before the Court upon Plaintiff Maleek Fulton's pro se ("Plaintiff") complaint against two detention officers, filed pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2), D.S.C., the matter was referred to a United States Magistrate Judge for preliminary review.

On October 12, 2023, the Magistrate Judge reviewed the record and issued a report and recommendation ("Report"), outlining the issues and recommending that the Court deny Defendants' motion for summary judgment as to Plaintiff's excessive force based on the existence of a genuine dispute of material fact as to the objective reasonableness of Defendants' alleged used of physical force. The Magistrate Judge recommended granting Defendants' motion for summary judgment as to all of Plaintiff's other claims. (ECF No. 97.)

On March 18, 2024, the undersigned entered an order adopting and incorporating the Magistrate Judge's Report and recommitting the matter to the Magistrate Judge to advise the parties as to available alternative dispute resolution procedures and to determine whether the appointment of counsel may be appropriate. (ECF No. 104.)

On April 12, 2024, the Magistrate Judge issued a notice for a Rule 16 Conference

to be held on May 22, 2024, at 10:00 a.m., and the Clerk of Court mailed the notice to Plaintiff's last known address. (ECF Nos. 110, 111.) This mail was not returned to the Court.

Plaintiff failed to appear for the scheduled hearing, and the Court received no further communication from Plaintiff. At the hearing, Defendants moved to dismiss the case based on Plaintiff's failure to appear, and the Magistrate Judge agreed with Defendants. Accordingly, the Magistrate Judge issued a Report on May 22, 2024, recommending that this matter be dismissed. (ECF No. 115 (citing Fed. R. Civ. P. 16(f)(1).) Attached to the Magistrate Judge's Report was a notice advising Plaintiff of the right to file written objections to the Report within fourteen days of being served with a copy. To date, no objections have been filed, and the report has not been returned to the Court as undeliverable.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the

recommendation.”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Here, because no objections to the Report have been filed, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. After review, the Court finds no clear error and agrees with the Magistrate Judge’s analysis. **Accordingly, the Court adopts and incorporates the Magistrate Judge’s Report (ECF No. 115), and the Court dismisses this action based on Plaintiff’s failure to appear and to prosecute.**

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

June 10, 2024
Charleston, South Carolina